

LFC Requester:**Eric Chenier**

**AGENCY BILL ANALYSIS
2016 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original ☒ **Amendment** ☐
Correction ☐ **Substitute** ☐

Date 21 January 2016

Bill No: SB 113

Sponsor: Sen. Mary Kay Papen

Agency Code: 305 – Office of the Atty. General

Short Assisted Outpatient Treatment

Person Writing Joseph M. Dworak, AAG

Title: Act

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE**BILL SUMMARY**

This analysis is neither a formal Attorney General's Opinion nor an Attorney General's Advisory Letter. This is a staff analysis in response to an agency's, committee's, or legislator's request.

Synopsis:

Senate Bill 113 proposes to create the Assisted Outpatient Treatment Act as fifteen new sections to the Mental Health and Developmental Disabilities Code. SB 113 also makes limited amendments to Sections 43-1-3 and 43-1-19 of the Code.

SB 53 establishes a process for assisted outpatient treatment proceedings in district courts that would allow a judge to order people diagnosed with mental illness and who meet certain criterion into outpatient treatment programs for up to one year.

A person may be ordered to participate in assisted outpatient treatment if the court determines they are 1) over 18 years old and a resident of a participating municipality; 2) have a primary diagnosis of a mental disorder; 3) have a history of lack of compliance with treatment for the mental disorder; 4) unwilling or unlikely to participate willingly in such treatment; 5) in need of assisted outpatient treatment as the least restrictive alternative; and 6) will likely benefit from receiving outpatient treatment.

A petition for a court order authorizing assisted outpatient treatment must include an affidavit of a qualified professional who had personally examined, or unsuccessfully attempted to examine the respondent, within the past 10 days; and the professional recommends assisted outpatient treatment. A petition may be filed only by:

- 1) a person at least 18 who resides with the respondent;
- 2) a parent or spouse;
- 3) sibling or child;
- 4) director of a hospital where the respondent is hospitalized;
- 5) director of an organization or home where respondent lives and receives mental health services;
- 6) qualified health professional who treats or supervises mental health treatment of respondent for the past 48 months; or
- 7) a surrogate decision-maker.

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

PERFORMANCE IMPLICATIONS

SB 113 provides that a person 18 years old or older who resides with the respondent may file a petition for an order authorizing assisted outpatient treatment. Consideration should be given as to how an individual may obtain an affidavit from a qualified professional as required in a petition to the court without implicating privacy laws and medical record confidentiality concerns.

SB 113 mandates that a respondent shall be represented by counsel at all stages of the proceeding without providing further details. This role may be served by contract attorney services through the administrative office of the courts, but it should be made clear and financial obligations should be considered. Furthermore, securing an attorney, whether appointed or privately obtained, may take time. Consideration should be given to how obtaining counsel would affect the short time requirements for holding a hearing (currently 3-7 days after notice of the hearing).

SB 113 provides a “right to an expeditious appeal” of a final order. It is not clear how this would be applied to the judicial system or if more specific time requirements could be included.

SB 113 allows for a qualified provider to appear telephonically (or by other remote means) in a hearing regarding the petition for an order to require treatment. Consideration should be given to confrontation clause issues in the event the respondent was ordered to a type of confinement.

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS

SB 113 imposes several short time requirements in regard to scheduling hearings and issuing decisions. Several of these time requirements could be better clarified to avoid any confusion in implementing procedures. For example, Section 6 requires a court to fix a date for a hearing “no sooner than three or later than seven days after the date of service.” It is unclear as to what is the initiating date.